

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Lifeline and Link Up Reform and
Modernization

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WC Docket No. 11-42

**PETITION OF THE NEW YORK STATE PUBLIC SERVICE COMMISSION
FOR A WAIVER OF
THE IMPLEMENTATION OF THE NATIONAL VERIFIER
PURUANT TO 47 C.F.R. § 1.3**

October 7, 2019

I. INTRODUCTION

The New York State Public Service Commission (NYPSC) hereby seeks a temporary waiver pursuant to 47 C.F.R. § 1.3 regarding implementation of the National Lifeline Eligibility Verifier (National Verifier) system. Section 1.3 authorizes the Federal Communications Commission (FCC) to waive compliance with its rules based on a finding of “good cause.” More specifically, the FCC:

may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.¹

As demonstrated below, a temporary waiver of the hard launch scheduled for New York State on October 23, 2019 of the National Verifier will serve the public interest because a waiver would: (1) prevent current qualified Lifeline consumers from being de-enrolled at their annual reverification; and (2) continue to allow qualified low-income consumers to access Lifeline benefits during the time period that the New York State Office of Temporary and Disability Assistance (OTDA) and the Universal Service Administrative Co. (USAC) work on a state data sharing agreement to allow for automated verification of a consumer's low-income status and Lifeline eligibility. Strict adherence to the October 23, 2019 hard launch date is not in the public interest in this case because it would very likely cause otherwise eligible low-income consumers to be denied Lifeline benefits during this transitional period.² The temporary waiver is consistent

¹ *In the Matter of Lifeline and Link Up Reform and Modernization*, Order 32 FCC Rcd. 10099 (F.C.C.), 32 F.C.C.R. 10099, 2017 WL 5712829 **2 (footnotes omitted).

² *See Id.* (granting New York State Public Service Commission an extension of an existing waiver to align its eligibility criteria with the Commission's Lifeline eligibility rules and update its eligibility database for good cause); *see also In the Matter of Lifeline and Link Up Reform and Modernization*, Order, 31 FCC Rcd. (F.C.C.), 31 F.C.C.R. 12718, 2016 WL 7036100 (granting Vermont, Michigan, California, Wisconsin, Washington, New York,

with the Lifeline Resolutions adopted on July 24, 2019 by the National Association of (NARUC) Committee on Telecommunications, which recommends suspension of the hard rollout for some of the precise reasons discussed below.³

For these reasons, we urge the FCC to grant the temporary waiver requested herein.

II. BACKGROUND

In 2016, the FCC directed USAC to establish a comprehensive nationwide system to determine subscriber eligibility for the FCC's Universal Service Fund Lifeline program, the National Verifier. Lifeline provides critical telecommunication services and internet access to low-income households across the United States. To qualify for the federal Lifeline program, (i) a household must be enrolled in a qualifying federal assistance program (Supplemental Nutrition Assistance Program (SNAP), Supplemental Security Income (SSI), Federal Public Housing Assistance (FPHA), Medicaid, Veterans Pension and Survivors Benefit), or (ii) the household's income must be at or below 135% of the federal poverty guidelines.

In New York State, as of June 2019, there were 740,682 low-income households receiving Lifeline service out of approximately 2,639,649 eligible households. Lifeline is critical to health, safety, and well-being of New York's low-income residents. Indeed, absent the extension of time being granted, real hardship could be imposed on low-income New Yorkers, including veterans who rely on Lifeline for access to doctors and health care providers, low-income students who rely on access to internet service to enable them to complete homework assignments, and low-income individuals who rely on communications tools and internet access to reach emergency services,

Utah, Maryland, Oregon, Missouri, New Mexico, and the United States Telecom Association waivers of certain Lifeline requirements for good cause shown.)

³ <https://pubs.naruc.org/pub/673FDE8A-A3A4-9353-E4B5-DB7D61961B0B>

search and apply for jobs, communicate with employers, and communicate with child care and health care providers.

The NYPSC took appropriate steps in April 2018 to maintain state support for the Lifeline program. In case 17-C-0171, the NYPSC found that, “it is in the public interest to maintain a low-income assistance program for basic telephone service for those consumers in New York who would lose federal and state Lifeline support based on their qualifying for Lifeline service solely under programs eliminated by the FCC.”⁴ Further, NYPSC distributed new outreach material to community partners and held outreach events during the week of Lifeline Awareness, September 9-13, 2019. The outreach campaign was designed to ensure that affected low-income consumers were aware of the changes to Lifeline program eligibility and the application process.

Following a brief, five-month soft launch,⁵ on November 2, 2018, USAC implemented the National Verifier hard launch in the first wave of six states: Colorado, Mississippi, Montana, New Mexico, Utah, and Wyoming. Less than a year later, USAC has hard launched the National Verifier in a total of twenty-seven states and U.S. territories. Further, on September 23, 2019, the FCC and USAC announced the hard launch effective October 23, 2019 that covers eleven states, including New York.⁶

Unfortunately, the hard launch of the National Verifier appears to have excluded from eligibility low-income households that should be allowed to participate in the program. Among the most significant difficulties is that USAC has not had access to a variety of enrollment

⁴ Case 17-C-0171 Proceeding on Motion of the Commission to Review the Targeted Accessibility Fund, Order Directing Tariff Filings Regarding Lifeline Eligibility, issued and effective April 19, 2018, page 11.

⁵ During the soft launch, use of the National Verifier to verify Lifeline eligibility was optional. Once hard launched, however, the National Verifier provides the sole means of verification.

⁶ <https://www.fcc.gov/document/wcb-announces-launch-national-verifier-11-states>

information for state administered low-income programs, such as SNAP and Medicaid.⁷ Without automated access to state data using Application Programming Interfaces (APIs) to automatically (system to system) verify a Lifeline applicant's participation in such low-income programs, USAC must manually attempt to verify an applicant's low-income status, a much more labor intensive, and thus potentially error-prone process. Consequently, the numbers for Lifeline eligibility, Lifeline reverification (reverification of the eligibility of existing Lifeline subscribers), and Lifeline participation have each dropped in those states in which USAC has hard launched the National Verifier. For example, the failure rate for Lifeline reverifications in states with only an automated connection to the FPHA data ranged from 89% to 98%.⁸

Of important note, the request to provide New York with additional time to establish an electronic verification process is consistent with the Lifeline Resolutions adopted on July 24, 2019 by the NARUC Committee on Telecommunications. One of the resolutions "urges the FCC to only continue to 'soft launch' the National Verifier in states and to temporarily suspend 'hard launch' of the National Verifier in states until either December 31, 2019 or until service provider APIs are established, and electronic access to state databases, such as SNAP or SSI, and federal /state Medicaid databases are available to confirm subscriber eligibility, whichever is later..."⁹ It appears that this resolution was based on NARUC's finding that there were "structural deficiencies," including the National Verifier's limited or non-existent access to state SNAP

⁷ On September 18, 2019, the FCC announced the "Automated Connection Between Medicaid and Lifeline Databases Goes Live." This automated connection between USAC's National Eligibility Verifier and the Centers for Medicare and Medicaid Services (CMS) may potentially verify the eligibility of up to 60% of the Lifeline population.

⁸ May 13, 2019 Letter from the Federal Communications Commission (FCC), Chairman Ajit Pai to Honorable Yvette D. Clarke.

⁹ See supra note 3, page 3.

eligibility data and the failure to include an API to assist in verifying eligibility and maintaining enrollment.¹⁰

While it is laudable that the FCC recently announced (on September 17, 2019) the availability of a nationwide automated connection between the Medicaid program and the National Verifier,¹¹ we estimate that this new verification process has the potential to assist with the automated verification of up to at most 60 percent of the Lifeline eligible population. Accordingly, at least 40 percent the low-income population would remain unable to be verified automatically. Obviously, the hard launch scheduled for New York State on October 23, 2019 would be problematic without access to the SNAP data or the other low-income programs discussed above.

III. WAIVER REQUEST

Currently, NYPSC and OTDA are working diligently with USAC to create an electronic verification process, including establishing an API connection which will allow USAC the ability to verify State SNAP recipients. The process of establishing a data agreement and API connection with New York is both technically and legally complicated. OTDA anticipates that executing an agreement with USAC and performing the necessary testing of the system will take some additional time.

Our expectation is that, if the National Verifier hard launches in New York on October 23, 2019, prior to USAC's establishment of an API connections with OTDA, many otherwise qualified low-income consumers would be unnecessarily denied Lifeline eligibility, both as initial applicants and in the re-verification process. As already noted, denial of access to this critical resource would

¹⁰ Id. page 1.

¹¹ <https://docs.fcc.gov/public/attachments/DOC-359731A1.pdf>

create an immediate hardship for those low-income students, veterans and other New Yorkers that currently rely on the internet for a variety of services.

These unfortunate outcomes can be avoided by delaying the New York hard-launch of the National Verifier until an agreement with USAC and API connection to OTDA is completed. Therefore, pursuant to 47 C.F.R. § 1.3, NYPSC respectfully requests that the Federal Communications Commission:

1. Grant the NYPSC a temporary waiver of *Lifeline and Link Up Reform and Modernization, et al.*, Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 4022-40, paras. 168-216 (2016), thereby waiving the October 23, 2019 hard-launch date of the National Verifier, until either (i) the National Verifier API connection and electronic verification process are established with OTDA or (ii) December 31, 2019, whichever is later.
2. Grant such other relief as the Commission may deem appropriate.

Respectfully Submitted,

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October 7, 2019